IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

Appeal against Order No. 107 of 2007
[S.T. Shendge & another Vs. Dr. S.V. Chiddarwar & ors.]

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

Mr. O.W. Gupta, Advocate for the appellants.
Mr. R.R. Deshpande, Advocate for Respondent Nos. 1 to 3.

CORAM : A.H. JOSHI, J.

DATE : 11th December,2007.

1. Heard.

2. The appellants herein are aggrieved by the order passed by the Trial Court rejecting application [Exh.5] in present appellants' suit and allowing a similar application in the suit filed by the present respondents.

3. On perusal of the Judgment, it is seen that the Trial Court has discreetly examined the background as emerged on record, namely earlier suit, fact of injunction granted in favour of present appellants in earlier suit, the manner in which the revenue record has undergone the change and right, title and interest of vendor of the present respondent no.1.

4. The Trial Court has recorded a categorical finding that the respondent no.1 is in possession. This finding is sought to be assailed by taking recourse to documents [Annexs. E-1, E-2 and E-3]. These documents, in fact, in no manner, prove the possession of appellants and rather exhibit that revenue authorities found it proper to issue notice to the appellants in view of previous record.

5. On the basis of evidence on record, Trial Court has found that present respondent Dr. Satish Chiddarwar is in possession, and granted injunction protecting his possession and rejected present appellants' application.

6. The Judgment and order impugned is passed by the Trial Court on what appeared to it prima facie and these conclusions are not open to challenge unless they are shown to be wholly unavailable on record, which is not the challenge in the Appeal.

7. The appellants claim to have a different view of the same facts. Such re-appreciation and substitution of conclusions is not permissible, particularly in an appeal arising out of interlocutory matters where the Trial Court was empowered to see and conclude as to what appears prima facie from the record before it. Further and microscopic scrutiny is not contemplated or permissible.

8. The Appeal, therefore, does not have any merit. It is, therefore, dismissed.

Judge

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